

108<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5107

To protect crime victims' rights, to eliminate the substantial backlog of DNA samples collected from crime scenes and convicted offenders, to improve and expand the DNA testing capacity of Federal, State, and local crime laboratories, to increase research and development of new DNA testing technologies, to develop new training programs regarding the collection and use of DNA evidence, to provide post-conviction testing of DNA evidence to exonerate the innocent, to improve the performance of counsel in State capital cases, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 21, 2004

Mr. SENSENBRENNER (for himself, Mr. CONYERS, Mr. CHABOT, Mr. COBLE, Mr. DELAHUNT, Ms. PRYCE of Ohio, Mr. GREEN of Wisconsin, Mr. SCOTT of Virginia, Mr. JENKINS, Mr. SCHIFF, Mr. WEINER, Ms. HART, Mr. BACHUS, Ms. BALDWIN, Mr. KELLER, and Mr. NADLER) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To protect crime victims' rights, to eliminate the substantial backlog of DNA samples collected from crime scenes and convicted offenders, to improve and expand the DNA testing capacity of Federal, State, and local crime laboratories, to increase research and development of new DNA testing technologies, to develop new training programs regarding the collection and use of DNA evidence, to provide post-conviction testing of DNA evidence to exonerate the innocent, to improve the performance of counsel in State capital cases, and for other purposes.

1        *Be it enacted by the Senate and House of Representa-*  
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4        (a) SHORT TITLE.—This Act may be cited as the  
 5 “Justice for All Act of 2004”.

6        (b) TABLE OF CONTENTS.—The table of contents for  
 7 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—SCOTT CAMBELL, STEPHANIE ROPER, WENDY PRES-  
 TON, LOUARNA GILLIS, AND NILA LYNN CRIME VICTIMS’  
 RIGHTS ACT

Sec. 101. Short title.

Sec. 102. Crime victims’ rights.

Sec. 103. Increased resources for enforcement of crime victims’ rights.

Sec. 104. Reports.

TITLE II—DEBBIE SMITH ACT OF 2004

Sec. 201. Short title.

Sec. 202. Debbie Smith DNA Backlog Grant Program.

Sec. 203. Expansion of Combined DNA Index System.

Sec. 204. Tolling of statute of limitations.

Sec. 205. Legal assistance for victims of violence.

Sec. 206. Ensuring private laboratory assistance in eliminating DNA backlog.

TITLE III—DNA SEXUAL ASSAULT JUSTICE ACT OF 2004

Sec. 301. Short title.

Sec. 302. Ensuring public crime laboratory compliance with Federal standards.

Sec. 303. DNA training and education for law enforcement, correctional per-  
 sonnel, and court officers.

Sec. 304. Sexual assault forensic exam program grants.

Sec. 305. DNA research and development.

Sec. 306. National Forensic Science Commission.

Sec. 307. FBI DNA programs.

Sec. 308. DNA identification of missing persons.

Sec. 309. Enhanced criminal penalties for unauthorized disclosure or use of  
 DNA information.

Sec. 310. Tribal coalition grants.

Sec. 311. Expansion of Paul Coverdell Forensic Sciences Improvement Grant  
 Program.

Sec. 312. Report to Congress.

TITLE IV—INNOCENCE PROTECTION ACT OF 2004

Sec. 401. Short title.

Subtitle A—Exonerating the innocent through DNA testing

- Sec. 411. Federal post-conviction DNA testing.  
 Sec. 412. Kirk Bloodsworth Post-Conviction DNA Testing Grant Program.  
 Sec. 413. Incentive grants to States to ensure consideration of claims of actual innocence.

Subtitle B—Improving the quality of representation in State capital cases

- Sec. 421. Capital representation improvement grants.  
 Sec. 422. Capital prosecution improvement grants.  
 Sec. 423. Applications.  
 Sec. 424. State reports.  
 Sec. 425. Evaluations by Inspector General and administrative remedies.  
 Sec. 426. Authorization of appropriations.

Subtitle C—Compensation for the wrongfully convicted

- Sec. 431. Increased compensation in Federal cases for the wrongfully convicted.  
 Sec. 432. Sense of Congress regarding compensation in State death penalty cases.

1 **TITLE I—SCOTT CAMBELL,**  
 2 **STEPHANIE ROPER, WENDY**  
 3 **PRESTON, LOUARNA GILLIS,**  
 4 **AND NILA LYNN CRIME VIC-**  
 5 **TIMS’ RIGHTS ACT**

6 **SEC. 101. SHORT TITLE.**

7 This title may be cited as the “Scott Campbell,  
 8 Stephanie Roper, Wendy Preston, Louarna Gillis, and  
 9 Nila Lynn Crime Victims’ Rights Act”.

10 **SEC. 102. CRIME VICTIMS’ RIGHTS.**

11 (a) AMENDMENT TO TITLE 18.—Part II of title 18,  
 12 United States Code, is amended by adding at the end the  
 13 following:

14 **“CHAPTER 237—CRIME VICTIMS’ RIGHTS**

“Sec.  
 “3771. Crime victims’ rights.

1 **“§ 3771. Crime victims’ rights**

2 “(a) RIGHTS OF CRIME VICTIMS.—A crime victim  
3 has the following rights:

4 “(1) The right to be reasonably protected from  
5 the accused.

6 “(2) The right to reasonable, accurate, and  
7 timely notice of any public court proceeding involv-  
8 ing the crime or of any release or escape of the ac-  
9 cused.

10 “(3) The right not to be excluded from any  
11 such public court proceeding, unless the court deter-  
12 mines that testimony by the victim would be materi-  
13 ally affected if the victim heard other testimony at  
14 that proceeding.

15 “(4) The right to be reasonably heard at any  
16 public proceeding involving release, plea, or sen-  
17 tencing.

18 “(5) The reasonable right to confer with the at-  
19 torney for the Government in the case.

20 “(6) The right to full and timely restitution as  
21 provided in law.

22 “(7) The right to proceedings free from unrea-  
23 sonable delay.

24 “(8) The right to be treated with fairness and  
25 with respect for the victim’s dignity and privacy.

1       “(b) RIGHTS AFFORDED.—In any court proceeding  
2 involving an offense against a crime victim, the court shall  
3 ensure that the crime victim is afforded the rights de-  
4 scribed in subsection (a). Before denying a crime victim  
5 the right described in subsection (a)(3), the court shall  
6 make every effort to permit the fullest attendance possible  
7 by the victim and shall consider reasonable alternatives  
8 to the exclusion of the victim from the criminal pro-  
9 ceeding. The reasons for any decision denying relief under  
10 this chapter shall be clearly stated on the record.

11       “(c) BEST EFFORTS TO ACCORD RIGHTS.—

12               “(1) GOVERNMENT.—Officers and employees of  
13 the Department of Justice and other departments  
14 and agencies of the United States engaged in the de-  
15 tection, investigation, or prosecution of crime shall  
16 make their best efforts to see that crime victims are  
17 notified of, and accorded, the rights described in  
18 subsection (a).

19               “(2) ADVICE OF ATTORNEY.—The prosecutor  
20 shall advise the crime victim that the crime victim  
21 can seek the advice of an attorney with respect to  
22 the rights described in subsection (a).

23               “(3) NOTICE.—Notice of release otherwise re-  
24 quired pursuant to this chapter shall not be given if  
25 such notice may endanger the safety of any person.

1 “(d) ENFORCEMENT AND LIMITATIONS.—

2 “(1) RIGHTS.—The crime victim or the crime  
3 victim’s lawful representative, and the attorney for  
4 the Government may assert the rights described in  
5 subsection (a). A person accused of the crime may  
6 not obtain any form of relief under this chapter.

7 “(2) MULTIPLE CRIME VICTIMS.—In a case  
8 where the court finds that the number of crime vic-  
9 tims makes it impracticable to accord all of the  
10 crime victims the rights described in subsection (a),  
11 the court shall fashion a reasonable procedure to  
12 give effect to this chapter that does not unduly com-  
13 plicate or prolong the proceedings.

14 “(3) MOTION FOR RELIEF AND WRIT OF MAN-  
15 DAMUS.—The rights described in subsection (a) shall  
16 be asserted in the district court in which a defend-  
17 ant is being prosecuted for the crime or, if no pros-  
18 ecution is underway, in the district court in the dis-  
19 trict in which the crime occurred. The district court  
20 shall take up and decide such motion forthwith. If  
21 the district court denies the relief sought, the mov-  
22 ant may petition the court of appeals for a writ of  
23 mandamus. The court of appeals may issue the writ  
24 on the order of a single judge pursuant to circuit  
25 rule or the Federal Rules of Appellate Procedure.

1 The court of appeals shall take up and decide such  
2 application forthwith within 72 hours after the peti-  
3 tion has been filed. In no event shall proceedings be  
4 stayed or subject to a continuance of more than five  
5 day, or affect the defendant's right to a speedy trial,  
6 for purposes of enforcing this chapter.

7 “(4) ERROR.—In any appeal in a criminal case,  
8 the Government may assert as error the district  
9 court's denial of any crime victim's right in the pro-  
10 ceeding to which the appeal relates.

11 “(5) LIMITATION ON RELIEF.—In no case shall  
12 a failure to afford a right under this chapter provide  
13 grounds for a new trial, or to reopen a plea or a sen-  
14 tence, except in the case of restitution as provided  
15 in title 18.

16 “(6) NO CAUSE OF ACTION.—Nothing in this  
17 chapter shall be construed to authorize a cause of  
18 action for damages or to create, to enlarge, or to  
19 imply any duty or obligation to any victim or other  
20 person for the breach of which the United States or  
21 any of its officers or employees could be held liable  
22 in damages. Nothing in this chapter shall be con-  
23 strued to impair the prosecutorial discretion of the  
24 Attorney General or any officer under his direction.

1       “(e) DEFINITIONS.—For the purposes of this chap-  
2 ter, the term ‘crime victim’ means a person directly and  
3 proximately harmed as a result of the commission of a  
4 Federal offense or an offense in the District of Columbia.  
5 In the case of a crime victim who is under 18 years of  
6 age, incompetent, incapacitated, or deceased, the legal  
7 guardians of the crime victim or the representatives of the  
8 crime victim’s estate, family members, or any other per-  
9 sons appointed as suitable by the court, may assume the  
10 crime victim’s rights under this chapter, but in no event  
11 shall the defendant be named as such guardian or rep-  
12 resentative.

13       “(f) PROCEDURES TO PROMOTE COMPLIANCE.—

14           “(1) REGULATIONS.—Not later than 1 year  
15 after the date of enactment of this chapter, the At-  
16 torney General of the United States shall promul-  
17 gate regulations to enforce the rights of crime vic-  
18 tims and to ensure compliance by responsible offi-  
19 cials with the obligations described in law respecting  
20 crime victims.

21           “(2) CONTENTS.—The regulations promulgated  
22 under paragraph (1) shall—

23           “(A) designate an administrative authority  
24 within the Department of Justice to receive and

1 investigate complaints relating to the provision  
2 or violation of the rights of a crime victim;

3 “(B) require a course of training for em-  
4 ployees and offices of the Department of Jus-  
5 tice that fail to comply with provisions of Fed-  
6 eral law pertaining to the treatment of crime  
7 victims, and otherwise assist such employees  
8 and offices in responding more effectively to the  
9 needs of crime victims;

10 “(C) contain disciplinary sanctions, includ-  
11 ing suspension or termination from employ-  
12 ment, for employees of the Department of Jus-  
13 tice who willfully or wantonly fail to comply  
14 with provisions of Federal law pertaining to the  
15 treatment of crime victims; and

16 “(D) provide that the Attorney General, or  
17 the designee of the Attorney General, shall be  
18 the final arbiter of the complaint, and that  
19 there shall be no judicial review of the final de-  
20 cision of the Attorney General by a complain-  
21 ant.”.

22 (b) TABLE OF CHAPTERS.—The table of chapters for  
23 part II of title 18, United States Code, is amended by  
24 inserting at the end the following:

“237. Crime victims’ rights ..... 3771”.

1 (c) REPEAL.—Section 502 of the Victims’ Rights and  
2 Restitution Act of 1990 (42 U.S.C. 10606) is repealed.

3 **SEC. 103. INCREASED RESOURCES FOR ENFORCEMENT OF**  
4 **CRIME VICTIMS’ RIGHTS.**

5 (a) CRIME VICTIMS LEGAL ASSISTANCE GRANTS.—  
6 The Victims of Crime Act of 1984 (42 U.S.C. 10601 et  
7 seq.) is amended by inserting after section 1404C the fol-  
8 lowing:

9 **“SEC. 1404D. CRIME VICTIMS LEGAL ASSISTANCE GRANTS.**

10 “(a) IN GENERAL.—The Director may make grants  
11 as provided in section 1404(c)(1)(A) to State, tribal, and  
12 local prosecutors’ offices, law enforcement agencies,  
13 courts, jails, and correctional institutions, and to qualified  
14 public and private entities, to develop, establish, and main-  
15 tain programs for the enforcement of crime victims’ rights  
16 as provided in law.

17 “(b) PROHIBITION.—Grant amounts under this sec-  
18 tion may not be used to bring a cause of action for dam-  
19 ages.

20 “(c) FALSE CLAIMS ACT.—Notwithstanding any  
21 other provision of law, amounts collected pursuant to sec-  
22 tions 3729 through 3731 of title 31, United States Code  
23 (commonly known as the ‘False Claims Act’), may be used  
24 for grants under this section, subject to appropriation.”.

1 (b) AUTHORIZATION OF APPROPRIATIONS.—In addi-  
2 tion to funds made available under section 1402(d) of the  
3 Victims of Crime Act of 1984, there are authorized to be  
4 appropriated to carry out this title—

5 (1) \$2,000,000 for fiscal year 2005 and  
6 \$5,000,000 for each of fiscal years 2006, 2007,  
7 2008, and 2009 to United States Attorneys Offices  
8 for Victim/Witnesses Assistance Programs;

9 (2) \$2,000,000 for fiscal year 2005 and  
10 \$5,000,000 in each of the fiscal years 2006, 2007,  
11 2008, and 2009, to the Office for Victims of Crime  
12 of the Department of Justice for enhancement of the  
13 Victim Notification System;

14 (3) \$300,000 in fiscal year 2005 and \$500,000  
15 for each of the fiscal years 2006, 2007, 2008, and  
16 2009, to the Office for Victims of Crime of the De-  
17 partment of Justice for staff to administer the ap-  
18 propriation for the support of organizations as des-  
19 ignated under paragraph (4);

20 (4) \$7,000,000 for fiscal year 2005 and  
21 \$11,000,000 for each of the fiscal years 2006, 2007,  
22 2008, and 2009, to the Office for Victims of Crime  
23 of the Department of Justice, for the support of or-  
24 ganizations that provide legal counsel and support  
25 services for victims in criminal cases for the enforce-

1       ment of crime victims’ rights in Federal jurisdic-  
2       tions, and in States and tribal governments that  
3       have laws substantially equivalent to the provisions  
4       of chapter 237 of title 18, United States Code; and

5               (5) \$5,000,000 for fiscal year 2005 and  
6       \$7,000,000 for each of fiscal years 2006, 2007,  
7       2008, and 2009, to the Office for Victims of Crime  
8       of the Department of Justice, for the support of—

9               (A) training and technical assistance to  
10       States and tribal jurisdictions to craft state-of-  
11       the-art victims’ rights laws; and

12              (B) training and technical assistance to  
13       States and tribal jurisdictions to design a vari-  
14       ety of compliance systems, which shall include  
15       an evaluation component.

16       (c) INCREASED RESOURCES TO DEVELOP STATE-OF-  
17       THE-ART SYSTEMS FOR NOTIFYING CRIME VICTIMS OF  
18       IMPORTANT DATES AND DEVELOPMENTS.—The Victims  
19       of Crime Act of 1984 (42 U.S.C. 10601 et seq.) is amend-  
20       ed by inserting after section 1404D the following:

21       **“SEC. 1404E. CRIME VICTIMS NOTIFICATION GRANTS.**

22              “(a) IN GENERAL.—The Director may make grants  
23       as provided in section 1404(c)(1)(A) to State, tribal, and  
24       local prosecutors’ offices, law enforcement agencies,  
25       courts, jails, and correctional institutions, and to qualified

1 public or private entities, to develop and implement state-  
2 of-the-art systems for notifying victims of crime of impor-  
3 tant dates and developments relating to the criminal pro-  
4 ceedings at issue in a timely and efficient manner, pro-  
5 vided that the jurisdiction has laws substantially equiva-  
6 lent to the provisions of chapter 237 of title 18, United  
7 States Code.

8 “(b) INTEGRATION OF SYSTEMS.—Systems developed  
9 and implemented under this section may be integrated  
10 with existing case management systems operated by the  
11 recipient of the grant.

12 “(c) AUTHORIZATION OF APPROPRIATIONS.—In ad-  
13 dition to funds made available under section 1402(d),  
14 there are authorized to be appropriated to carry out this  
15 section—

16 “(1) \$5,000,000 for fiscal year 2005; and

17 “(2) \$5,000,000 for each of the fiscal years  
18 2006, 2007, 2008, and 2009.

19 “(d) FALSE CLAIMS ACT.—Notwithstanding any  
20 other provision of law, amounts collected pursuant to sec-  
21 tions 3729 through 3731 of title 31, United States Code  
22 (commonly known as the ‘False Claims Act’), may be used  
23 for grants under this section, subject to appropriation.”.

1 **SEC. 104. REPORTS.**

2 (a) ADMINISTRATIVE OFFICE OF THE UNITED  
3 STATES COURTS.—Not later than 1 year after the date  
4 of enactment of this Act and annually thereafter, the Ad-  
5 ministrative Office of the United States Courts, for each  
6 Federal court, shall report to Congress the number of  
7 times that a right established in chapter 237 of title 18,  
8 United States Code, is asserted in a criminal case and the  
9 relief requested is denied and, with respect to each such  
10 denial, the reason for such denial, as well as the number  
11 of times a mandamus action is brought pursuant to chap-  
12 ter 237 of title 18, and the result reached.

13 (b) GOVERNMENT ACCOUNTABILITY OFFICE.—

14 (1) STUDY.—The Comptroller General shall  
15 conduct a study that evaluates the effect and effi-  
16 cacy of the implementation of the amendments made  
17 by this title on the treatment of crime victims in the  
18 Federal system.

19 (2) REPORT.—Not later than 4 years after the  
20 date of enactment of this Act, the Comptroller Gen-  
21 eral shall prepare and submit to the appropriate  
22 committees a report containing the results of the  
23 study conducted under subsection (a).

1 **TITLE II—DEBBIE SMITH ACT OF**  
2 **2004**

3 **SEC. 201. SHORT TITLE.**

4 This title may be cited as the “Debbie Smith Act of  
5 2004”.

6 **SEC. 202. DEBBIE SMITH DNA BACKLOG GRANT PROGRAM.**

7 (a) DESIGNATION OF PROGRAM; ELIGIBILITY OF  
8 LOCAL GOVERNMENTS AS GRANTEES.—Section 2 of the  
9 DNA Analysis Backlog Elimination Act of 2000 (42  
10 U.S.C. 14135) is amended—

11 (1) by amending the heading to read as follows:

12 **“SEC. 2. THE DEBBIE SMITH DNA BACKLOG GRANT PRO-**  
13 **GRAM.”;**

14 (2) in subsection (a)—

15 (A) in the matter preceding paragraph

16 (1)—

17 (i) by inserting “or units of local gov-  
18 ernment” after “eligible States”; and

19 (ii) by inserting “or unit of local gov-  
20 ernment” after “State”;

21 (B) in paragraph (2), by inserting before  
22 the period at the end the following: “, including  
23 samples from rape kits, samples from other sex-  
24 ual assault evidence, and samples taken in cases  
25 without an identified suspect”; and

1 (C) in paragraph (3), by striking “within  
2 the State”;

3 (3) in subsection (b)—

4 (A) in the matter preceding paragraph  
5 (1)—

6 (i) by inserting “or unit of local gov-  
7 ernment” after “State” both places that  
8 term appears; and

9 (ii) by inserting “, as required by the  
10 Attorney General” after “application  
11 shall”;

12 (B) in paragraph (1), by inserting “or unit  
13 of local government” after “State”;

14 (C) in paragraph (3), by inserting “or unit  
15 of local government” after “State” the first  
16 place that term appears;

17 (D) in paragraph (4)—

18 (i) by inserting “or unit of local gov-  
19 ernment” after “State”; and

20 (ii) by striking “and” at the end;

21 (E) in paragraph (5)—

22 (i) by inserting “or unit of local gov-  
23 ernment” after “State”; and

24 (ii) by striking the period at the end  
25 and inserting a semicolon; and

1 (F) by adding at the end the following:

2 “(6) if submitted by a unit of local government,  
3 certify that the unit of local government has taken,  
4 or is taking, all necessary steps to ensure that it is  
5 eligible to include, directly or through a State law  
6 enforcement agency, all analyses of samples for  
7 which it has requested funding in the Combined  
8 DNA Index System; and”;

9 (4) in subsection (d)—

10 (A) in paragraph (1)—

11 (i) in the matter preceding subpara-  
12 graph (A), by striking “The plan” and in-  
13 sserting “A plan pursuant to subsection  
14 (b)(1)”;

15 (ii) in subparagraph (A), by striking  
16 “within the State”; and

17 (iii) in subparagraph (B), by striking  
18 “within the State”; and

19 (B) in paragraph (2)(A), by inserting “and  
20 units of local government” after “States”;

21 (5) in subsection (e)—

22 (A) in paragraph (1), by inserting “or local  
23 government” after “State” both places that  
24 term appears; and

1 (B) in paragraph (2), by inserting “or unit  
2 of local government” after “State”;

3 (6) in subsection (f), in the matter preceding  
4 paragraph (1), by inserting “or unit of local govern-  
5 ment” after “State”;

6 (7) in subsection (g)—

7 (A) in paragraph (1), by inserting “or unit  
8 of local government” after “State”; and

9 (B) in paragraph (2), by inserting “or  
10 units of local government” after “States”; and

11 (8) in subsection (h), by inserting “or unit of  
12 local government” after “State” both places that  
13 term appears.

14 (b) REAUTHORIZATION AND EXPANSION OF PRO-  
15 GRAM.—Section 2 of the DNA Analysis Backlog Elimini-  
16 nation Act of 2000 (42 U.S.C. 14135) is amended—

17 (1) in subsection (a)—

18 (A) in paragraph (3), by inserting “(1) or”  
19 before “(2)”;

20 (B) by inserting at the end the following:

21 “(4) To collect DNA samples specified in para-  
22 graph (1).

23 “(5) To ensure that DNA testing and analysis  
24 of samples from crimes, including sexual assault and

1 other serious violent crimes, are carried out in a  
2 timely manner.”;

3 (2) in subsection (b), as amended by this sec-  
4 tion, by inserting at the end the following:

5 “(7) specify that portion of grant amounts that  
6 the State or unit of local government shall use for  
7 the purpose specified in subsection (a)(4).”;

8 (3) by amending subsection (c) to read as fol-  
9 lows:

10 “(c) FORMULA FOR DISTRIBUTION OF GRANTS.—

11 “(1) IN GENERAL.—The Attorney General shall  
12 distribute grant amounts, and establish appropriate  
13 grant conditions under this section, in conformity  
14 with a formula or formulas that are designed to ef-  
15 fectuate a distribution of funds among eligible  
16 States and units of local government that—

17 “(A) maximizes the effective utilization of  
18 DNA technology to solve crimes and protect  
19 public safety; and

20 “(B) allocates grants among eligible enti-  
21 ties fairly and efficiently to address jurisdic-  
22 tions in which significant backlogs exist, by con-  
23 sidering—

1                   “(i) the number of offender and case-  
2                   work samples awaiting DNA analysis in a  
3                   jurisdiction;

4                   “(ii) the population in the jurisdiction;  
5                   and

6                   “(iii) the number of part 1 violent  
7                   crimes in the jurisdiction.

8                   “(2) MINIMUM AMOUNT.—The Attorney Gen-  
9                   eral shall allocate to each State not less than 0.50  
10                  percent of the total amount appropriated in a fiscal  
11                  year for grants under this section, except that the  
12                  United States Virgin Islands, American Samoa,  
13                  Guam, and the Northern Mariana Islands shall each  
14                  be allocated 0.125 percent of the total appropriation.

15                  “(3) LIMITATION.—Grant amounts distributed  
16                  under paragraph (1) shall be awarded to conduct  
17                  DNA analyses of samples from casework or from  
18                  victims of crime under subsection (a)(2) in accord-  
19                  ance with the following limitations:

20                  “(A) For fiscal year 2005, not less than 50  
21                  percent of the grant amounts shall be awarded  
22                  for purposes under subsection (a)(2).

23                  “(B) For fiscal year 2006, not less than  
24                  50 percent of the grant amounts shall be  
25                  awarded for purposes under subsection (a)(2).

1           “(C) For fiscal year 2007, not less than 45  
2 percent of the grant amounts shall be awarded  
3 for purposes under subsection (a)(2).

4           “(D) For fiscal year 2008, not less than  
5 40 percent of the grant amounts shall be  
6 awarded for purposes under subsection (a)(2).

7           “(E) For fiscal year 2009, not less than 40  
8 percent of the grant amounts shall be awarded  
9 for purposes under subsection (a)(2).”;  
10 (4) in subsection (g)—

11           (A) in paragraph (1), by striking “and” at  
12 the end;

13           (B) in paragraph (2), by striking the pe-  
14 riod at the end and inserting “; and”; and

15           (C) by adding at the end the following:

16           “(3) a description of the priorities and plan for  
17 awarding grants among eligible States and units of  
18 local government, and how such plan will ensure the  
19 effective use of DNA technology to solve crimes and  
20 protect public safety.”;

21           (5) in subsection (j), by striking paragraphs (1)  
22 and (2) and inserting the following:

23           “(1) \$151,000,000 for fiscal year 2005;

24           “(2) \$151,000,000 for fiscal year 2006;

25           “(3) \$151,000,000 for fiscal year 2007;

1           “(4) \$151,000,000 for fiscal year 2008; and  
2           “(5) \$151,000,000 for fiscal year 2009.”; and  
3           (6) by adding at the end the following:

4           “(k) USE OF FUNDS FOR ACCREDITATION AND AU-  
5 DITS.—The Attorney General may distribute not more  
6 than 1 percent of the grant amounts under subsection  
7 (j)—

8           “(1) to States or units of local government to  
9 defray the costs incurred by laboratories operated by  
10 each such State or unit of local government in pre-  
11 paring for accreditation or reaccreditation;

12           “(2) in the form of additional grants to States,  
13 units of local government, or nonprofit professional  
14 organizations of persons actively involved in forensic  
15 science and nationally recognized within the forensic  
16 science community—

17           “(A) to defray the costs of external audits  
18 of laboratories operated by such State or unit  
19 of local government, which participates in the  
20 National DNA Index System, to determine  
21 whether the laboratory is in compliance with  
22 quality assurance standards;

23           “(B) to assess compliance with any plans  
24 submitted to the National Institute of Justice,  
25 which detail the use of funds received by States

1 or units of local government under this Act;  
2 and

3 “(C) to support future capacity building  
4 efforts; and

5 “(3) in the form of additional grants to non-  
6 profit professional associations actively involved in  
7 forensic science and nationally recognized within the  
8 forensic science community to defray the costs of  
9 training persons who conduct external audits of lab-  
10 oratories operated by States and units of local gov-  
11 ernment and which participate in the National DNA  
12 Index System.

13 “(1) EXTERNAL AUDITS AND REMEDIAL EFFORTS.—  
14 In the event that a laboratory operated by a State or unit  
15 of local government which has received funds under this  
16 Act has undergone an external audit conducted to deter-  
17 mine whether the laboratory is in compliance with stand-  
18 ards established by the Director of the Federal Bureau  
19 of Investigation, and, as a result of such audit, identifies  
20 measures to remedy deficiencies with respect to the com-  
21 pliance by the laboratory with such standards, the State  
22 or unit of local government shall implement any such re-  
23 mediation as soon as practicable.”.

1 **SEC. 203. EXPANSION OF COMBINED DNA INDEX SYSTEM.**

2 (a) INCLUSION OF ALL DNA SAMPLES FROM  
3 STATES.—Section 210304 of the DNA Identification Act  
4 of 1994 (42 U.S.C. 14132) is amended—

5 (1) in subsection (a)(1), by striking “of persons  
6 convicted of crimes;” and inserting the following:

7 “of—

8 “(A) persons convicted of crimes;

9 “(B) persons who have been indicted or  
10 who have waived indictment for a crime; and

11 “(C) other persons whose DNA samples  
12 are collected under applicable legal authorities,  
13 provided that DNA profiles from arrestees who  
14 have not been indicted and DNA samples that  
15 are voluntarily submitted solely for elimination  
16 purposes shall not be included in the Combined  
17 DNA Index System;”; and

18 (2) in subsection (d)(2)—

19 (A) by striking “if the responsible agency”  
20 and inserting “if—

21 “(i) the responsible agency”;

22 (B) by striking the period at the end and  
23 inserting “; or”; and

24 (C) by adding at the end the following:

25 “(ii) the person has not been convicted of  
26 an offense on the basis of which that analysis

1 was or could have been included in the index,  
2 and all charges for which the analysis was or  
3 could have been included in the index have been  
4 dismissed or resulted in acquittal.”.

5 (b) FELONS CONVICTED OF FEDERAL CRIMES.—  
6 Section 3(d) of the DNA Analysis Backlog Elimination  
7 Act of 2000 (42 U.S.C. 14135a(d)) is amended to read  
8 as follows:

9 “(d) QUALIFYING FEDERAL OFFENSES.—The of-  
10 fenses that shall be treated for purposes of this section  
11 as qualifying Federal offenses are the following offenses,  
12 as determined by the Attorney General:

13 “(1) Any felony.

14 “(2) Any offense under chapter 109A of title  
15 18, United States Code.

16 “(3) Any crime of violence (as that term is de-  
17 fined in section 16 of title 18, United States Code).

18 “(4) Any attempt or conspiracy to commit any  
19 of the offenses in paragraphs (1) through (3).”.

20 (c) MILITARY OFFENSES.—Section 1565(d) of title  
21 10, United States Code, is amended to read as follows:

22 “(d) QUALIFYING MILITARY OFFENSES.—The of-  
23 fenses that shall be treated for purposes of this section  
24 as qualifying military offenses are the following offenses,

1 as determined by the Secretary of Defense, in consultation  
2 with the Attorney General:

3 “(1) Any offense under the Uniform Code of  
4 Military Justice for which a sentence of confinement  
5 for more than one year may be imposed.

6 “(2) Any other offense under the Uniform Code  
7 of Military Justice that is comparable to a qualifying  
8 Federal offense (as determined under section 3(d) of  
9 the DNA Analysis Backlog Elimination Act of 2000  
10 (42 U.S.C. 14135a(d))).”.

11 (d) **KEYBOARD SEARCHES.**—Section 210304 of the  
12 DNA Identification Act of 1994 (42 U.S.C. 14132), as  
13 amended by subsection (a), is further amended by adding  
14 at the end the following new subsection:

15 “(e) **AUTHORITY FOR KEYBOARD SEARCHES.**—

16 “(1) **IN GENERAL.**—The Director shall ensure  
17 that any person who is authorized to access the  
18 index described in subsection (a) for purposes of in-  
19 cluding information on DNA identification records  
20 or DNA analyses in that index may also access that  
21 index for purposes of carrying out a one-time key-  
22 board search on information obtained from any  
23 DNA sample lawfully collected for a criminal justice  
24 purpose except for a DNA sample voluntarily sub-  
25 mitted solely for elimination purposes.

1           “(2) DEFINITION.—For purposes of paragraph  
2           (1), the term ‘keyboard search’ means a search  
3           under which information obtained from a DNA sam-  
4           ple is compared with information in the index with-  
5           out resulting in the information obtained from a  
6           DNA sample being included in the index.

7           “(3) NO PREEMPTION.—This subsection shall  
8           not be construed to preempt State law.”.

9   **SEC. 204. TOLLING OF STATUTE OF LIMITATIONS.**

10          (a) IN GENERAL.—Chapter 213 of title 18, United  
11 States Code, is amended by adding at the end the fol-  
12 lowing:

13   **“§ 3297. Cases involving DNA evidence**

14          “In a case in which DNA testing implicates an identi-  
15 fied person in the commission of a felony, no statute of  
16 limitations that would otherwise preclude prosecution of  
17 the offense shall preclude such prosecution until a period  
18 of time following the implication of the person by DNA  
19 testing has elapsed that is equal to the otherwise applica-  
20 ble limitation period.”.

21          (b) CLERICAL AMENDMENT.—The table of sections  
22 for chapter 213 of title 18, United States Code, is amend-  
23 ed by adding at the end the following:

“3297. Cases involving DNA evidence.”.

24          (c) APPLICATION.—The amendments made by this  
25 section shall apply to the prosecution of any offense com-

1 mitted before, on, or after the date of the enactment of  
2 this section if the applicable limitation period has not yet  
3 expired.

4 **SEC. 205. LEGAL ASSISTANCE FOR VICTIMS OF VIOLENCE.**

5 Section 1201 of the Violence Against Women Act of  
6 2000 (42 U.S.C. 3796gg-6) is amended—

7 (1) in subsection (a), by inserting “dating vio-  
8 lence,” after “domestic violence,”;

9 (2) in subsection (b)—

10 (A) by redesignating paragraphs (1)  
11 through (3) as paragraphs (2) through (4), re-  
12 spectively;

13 (B) by inserting before paragraph (2), as  
14 redesignated by subparagraph (A), the fol-  
15 lowing:

16 “(1) **DATING VIOLENCE.**—The term ‘dating vio-  
17 lence’ means violence committed by a person who is  
18 or has been in a social relationship of a romantic or  
19 intimate nature with the victim. The existence of  
20 such a relationship shall be determined based on a  
21 consideration of—

22 “(A) the length of the relationship;

23 “(B) the type of relationship; and

24 “(C) the frequency of interaction between  
25 the persons involved in the relationship.”; and

1 (C) in paragraph (3), as redesignated by  
2 subparagraph (A), by inserting “dating vio-  
3 lence,” after “domestic violence,”;

4 (3) in subsection (c)—

5 (A) in paragraph (1)—

6 (i) by inserting “, dating violence,”  
7 after “between domestic violence”; and

8 (ii) by inserting “dating violence,”  
9 after “victims of domestic violence,”;

10 (B) in paragraph (2), by inserting “dating  
11 violence,” after “domestic violence,”; and

12 (C) in paragraph (3), by inserting “dating  
13 violence,” after “domestic violence,”;

14 (4) in subsection (d)—

15 (A) in paragraph (1), by inserting “, dat-  
16 ing violence,” after “domestic violence”;

17 (B) in paragraph (2), by inserting “, dat-  
18 ing violence,” after “domestic violence”;

19 (C) in paragraph (3), by inserting “, dat-  
20 ing violence,” after “domestic violence”; and

21 (D) in paragraph (4), by inserting “dating  
22 violence,” after “domestic violence,”;

23 (5) in subsection (e), by inserting “dating vio-  
24 lence,” after “domestic violence,”; and

1           (6) in subsection (f)(2)(A), by inserting “dating  
2           violence,” after “domestic violence,”.

3   **SEC. 206. ENSURING PRIVATE LABORATORY ASSISTANCE IN**  
4                           **ELIMINATING DNA BACKLOG.**

5           Section 2(d)(3) of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135(d)(3)) is amended  
6           to read as follows:  
7

8                   “(3) USE OF VOUCHERS OR CONTRACTS FOR  
9           CERTAIN PURPOSES.—

10                   “(A) IN GENERAL.—A grant for the purposes specified in paragraph (1), (2), or (5) of  
11                   subsection (a) may be made in the form of a  
12                   voucher or contract for laboratory services.  
13

14                   “(B) REDEMPTION.—A voucher or contract under subparagraph (A) may be redeemed  
15                   at a laboratory operated by a private entity that  
16                   satisfies quality assurance standards and has  
17                   been approved by the Attorney General.  
18

19                   “(C) PAYMENTS.—The Attorney General  
20                   may use amounts authorized under subsection  
21                   (j) to make payments to a laboratory described  
22                   under subparagraph (B).”.



1 **SEC. 303. DNA TRAINING AND EDUCATION FOR LAW EN-**  
2 **FORCEMENT, CORRECTIONAL PERSONNEL,**  
3 **AND COURT OFFICERS.**

4 (a) **IN GENERAL.**—The Attorney General shall make  
5 grants to eligible entities to provide training, technical as-  
6 sistance, education, and information relating to the identi-  
7 fication, collection, preservation, analysis, and use of DNA  
8 samples and DNA evidence.

9 (b) **ELIGIBLE ENTITY.**—For purposes of subsection  
10 (a), an eligible entity is an organization consisting of, com-  
11 prised of, or representing—

12 (1) law enforcement personnel, including police  
13 officers and other first responders, evidence techni-  
14 cians, investigators, and others who collect or exam-  
15 ine evidence of crime;

16 (2) court officers, including State and local  
17 prosecutors, defense lawyers, and judges;

18 (3) forensic science professionals; and

19 (4) corrections personnel, including prison and  
20 jail personnel, and probation, parole, and other offi-  
21 cers involved in supervision.

22 (c) **AUTHORIZATION OF APPROPRIATIONS.**—There  
23 are authorized to be appropriated \$12,500,000 for each  
24 of fiscal years 2005 through 2009 to carry out this sec-  
25 tion.

1 **SEC. 304. SEXUAL ASSAULT FORENSIC EXAM PROGRAM**  
2 **GRANTS.**

3 (a) **IN GENERAL.**—The Attorney General shall make  
4 grants to eligible entities to provide training, technical as-  
5 sistance, education, equipment, and information relating  
6 to the identification, collection, preservation, analysis, and  
7 use of DNA samples and DNA evidence by medical per-  
8 sonnel and other personnel, including doctors, medical ex-  
9 aminers, coroners, nurses, victim service providers, and  
10 other professionals involved in treating victims of sexual  
11 assault and sexual assault examination programs, includ-  
12 ing SANE (Sexual Assault Nurse Examiner), SAFE (Sex-  
13 ual Assault Forensic Examiner), and SART (Sexual As-  
14 sault Response Team).

15 (b) **ELIGIBLE ENTITY.**—For purposes of this section,  
16 the term “eligible entity” includes—

17 (1) States;

18 (2) units of local government; and

19 (3) sexual assault examination programs, in-  
20 cluding—

21 (A) sexual assault nurse examiner (SANE)  
22 programs;

23 (B) sexual assault forensic examiner  
24 (SAFE) programs;

25 (C) sexual assault response team (SART)  
26 programs;

1 (D) State sexual assault coalitions;

2 (E) medical personnel, including doctors,  
3 medical examiners, coroners, and nurses, in-  
4 volved in treating victims of sexual assault; and

5 (F) victim service providers involved in  
6 treating victims of sexual assault.

7 (c) AUTHORIZATION OF APPROPRIATIONS.—There  
8 are authorized to be appropriated \$30,000,000 for each  
9 of fiscal years 2005 through 2009 to carry out this sec-  
10 tion.

11 **SEC. 305. DNA RESEARCH AND DEVELOPMENT.**

12 (a) IMPROVING DNA TECHNOLOGY.—The Attorney  
13 General shall make grants for research and development  
14 to improve forensic DNA technology, including increasing  
15 the identification accuracy and efficiency of DNA analysis,  
16 decreasing time and expense, and increasing portability.

17 (b) DEMONSTRATION PROJECTS.—The Attorney  
18 General shall make grants to appropriate entities under  
19 which research is carried out through demonstration  
20 projects involving coordinated training and commitment of  
21 resources to law enforcement agencies and key criminal  
22 justice participants to demonstrate and evaluate the use  
23 of forensic DNA technology in conjunction with other fo-  
24 rensic tools. The demonstration projects shall include sci-  
25 entific evaluation of the public safety benefits, improve-

1 ments to law enforcement operations, and cost-effective-  
2 ness of increased collection and use of DNA evidence.

3 (c) AUTHORIZATION OF APPROPRIATIONS.—There  
4 are authorized to be appropriated \$15,000,000 for each  
5 of fiscal years 2005 through 2009 to carry out this sec-  
6 tion.

7 **SEC. 306. NATIONAL FORENSIC SCIENCE COMMISSION.**

8 (a) APPOINTMENT.—The Attorney General shall ap-  
9 point a National Forensic Science Commission (in this  
10 section referred to as the “Commission”), composed of  
11 persons experienced in criminal justice issues, including  
12 persons from the forensic science and criminal justice  
13 communities, to carry out the responsibilities under sub-  
14 section (b).

15 (b) RESPONSIBILITIES.—The Commission shall—

16 (1) assess the present and future resource  
17 needs of the forensic science community;

18 (2) make recommendations to the Attorney  
19 General for maximizing the use of forensic tech-  
20 nologies and techniques to solve crimes and protect  
21 the public;

22 (3) identify potential scientific advances that  
23 may assist law enforcement in using forensic tech-  
24 nologies and techniques to protect the public;

1           (4) make recommendations to the Attorney  
2           General for programs that will increase the number  
3           of qualified forensic scientists available to work in  
4           public crime laboratories;

5           (5) disseminate, through the National Institute  
6           of Justice, best practices concerning the collection  
7           and analyses of forensic evidence to help ensure  
8           quality and consistency in the use of forensic tech-  
9           nologies and techniques to solve crimes and protect  
10          the public;

11          (6) examine additional issues pertaining to fo-  
12          rensic science as requested by the Attorney General;

13          (7) examine Federal, State, and local privacy  
14          protection statutes, regulations, and practices relat-  
15          ing to access to, or use of, stored DNA samples or  
16          DNA analyses, to determine whether such protec-  
17          tions are sufficient;

18          (8) make specific recommendations to the At-  
19          torney General, as necessary, to enhance the protec-  
20          tions described in paragraph (7) to ensure—

21                  (A) the appropriate use and dissemination  
22                  of DNA information;

23                  (B) the accuracy, security, and confiden-  
24                  tiality of DNA information;

1 (C) the timely removal and destruction of  
2 obsolete, expunged, or inaccurate DNA infor-  
3 mation; and

4 (D) that any other necessary measures are  
5 taken to protect privacy; and

6 (9) provide a forum for the exchange and dis-  
7 semination of ideas and information in furtherance  
8 of the objectives described in paragraphs (1) through  
9 (8).

10 (c) PERSONNEL; PROCEDURES.—The Attorney Gen-  
11 eral shall—

12 (1) designate the Chair of the Commission from  
13 among its members;

14 (2) designate any necessary staff to assist in  
15 carrying out the functions of the Commission; and

16 (3) establish procedures and guidelines for the  
17 operations of the Commission.

18 (d) AUTHORIZATION OF APPROPRIATIONS.—There  
19 are authorized to be appropriated \$500,000 for each of  
20 fiscal years 2005 through 2009 to carry out this section.

21 **SEC. 307. FBI DNA PROGRAMS.**

22 (a) AUTHORIZATION OF APPROPRIATIONS.—There  
23 are authorized to be appropriated to the Federal Bureau  
24 of Investigation \$42,100,000 for each of fiscal years 2005

1 through 2009 to carry out the DNA programs and activi-  
2 ties described under subsection (b).

3 (b) PROGRAMS AND ACTIVITIES.—The Federal Bu-  
4 reau of Investigation may use any amounts appropriated  
5 pursuant to subsection (a) for—

6 (1) nuclear DNA analysis;

7 (2) mitochondrial DNA analysis;

8 (3) regional mitochondrial DNA laboratories;

9 (4) the Combined DNA Index System;

10 (5) the Federal Convicted Offender DNA Pro-  
11 gram; and

12 (6) DNA research and development.

13 **SEC. 308. DNA IDENTIFICATION OF MISSING PERSONS.**

14 (a) IN GENERAL.—The Attorney General shall make  
15 grants to States and units of local government to promote  
16 the use of forensic DNA technology to identify missing  
17 persons and unidentified human remains.

18 (b) AUTHORIZATION OF APPROPRIATIONS.—There  
19 are authorized to be appropriated \$2,000,000 for each of  
20 fiscal years 2005 through 2009 to carry out this section.

1 **SEC. 309. ENHANCED CRIMINAL PENALTIES FOR UNAU-**  
2 **THORIZED DISCLOSURE OR USE OF DNA IN-**  
3 **FORMATION.**

4 Section 10(c) of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135e(c)) is amended to  
5 read as follows:  
6

7 “(c) **CRIMINAL PENALTY.**—A person who knowingly  
8 discloses a sample or result described in subsection (a) in  
9 any manner to any person not authorized to receive it,  
10 or obtains or uses, without authorization, such sample or  
11 result, shall be fined not more than \$100,000. Each in-  
12 stance of disclosure, obtaining, or use shall constitute a  
13 separate offense under this subsection.”.

14 **SEC. 310. TRIBAL COALITION GRANTS.**

15 (a) **IN GENERAL.**—Section 2001 of title I of the Om-  
16 nibus Crime Control and Safe Streets Act of 1968 (42  
17 U.S.C. 3796gg) is amended by adding at the end the fol-  
18 lowing:

19 “(d) **TRIBAL COALITION GRANTS.**—

20 “(1) **PURPOSE.**—The Attorney General shall  
21 award grants to tribal domestic violence and sexual  
22 assault coalitions for purposes of—

23 “(A) increasing awareness of domestic vio-  
24 lence and sexual assault against Indian women;

1           “(B) enhancing the response to violence  
2           against Indian women at the tribal, Federal,  
3           and State levels; and

4           “(C) identifying and providing technical  
5           assistance to coalition membership and tribal  
6           communities to enhance access to essential serv-  
7           ices to Indian women victimized by domestic  
8           and sexual violence.

9           “(2) GRANTS TO TRIBAL COALITIONS.—The At-  
10          torney General shall award grants under paragraph  
11          (1) to—

12           “(A) established nonprofit, nongovern-  
13           mental tribal coalitions addressing domestic vio-  
14           lence and sexual assault against Indian women;  
15           and

16           “(B) individuals or organizations that pro-  
17           pose to incorporate as nonprofit, nongovern-  
18           mental tribal coalitions to address domestic vio-  
19           lence and sexual assault against Indian women.

20           “(3) ELIGIBILITY FOR OTHER GRANTS.—Re-  
21          ceipt of an award under this subsection by tribal do-  
22          mestic violence and sexual assault coalitions shall  
23          not preclude the coalition from receiving additional  
24          grants under this title to carry out the purposes de-  
25          scribed in subsection (b).”.

1 (b) TECHNICAL AMENDMENT.—Effective as of No-  
2 vember 2, 2002, and as if included therein as enacted,  
3 Public Law 107–273 (116 Stat. 1789) is amended in sec-  
4 tion 402(2) by striking “sections 2006 through 2011” and  
5 inserting “sections 2007 through 2011”.

6 (c) AMOUNTS.—Section 2007 of the Omnibus Crime  
7 Control and Safe Streets Act of 1968 (as redesignated by  
8 section 402(2) of Public Law 107–273, as amended by  
9 subsection (b)) is amended by amending subsection (b)(4)  
10 (42 U.S.C. 3796gg–1(b)(4)) to read as follows:

11 “(4)  $\frac{1}{54}$  shall be available for grants under sec-  
12 tion 2001(d);”.

13 **SEC. 311. EXPANSION OF PAUL COVERDELL FORENSIC**  
14 **SCIENCES IMPROVEMENT GRANT PROGRAM.**

15 (a) FORENSIC BACKLOG ELIMINATION GRANTS.—  
16 Section 2804 of the Omnibus Crime Control and Safe  
17 Streets Act of 1968 (42 U.S.C. 3797m) is amended—

18 (1) in subsection (a)—

19 (A) by striking “shall use the grant to  
20 carry out” and inserting “shall use the grant to  
21 do any one or more of the following:

22 “(1) To carry out”; and

23 (B) by adding at the end the following:

24 “(2) To eliminate a backlog in the analysis of  
25 forensic science evidence, including firearms exam-

1 ination, latent prints, toxicology, controlled sub-  
2 stances, forensic pathology, questionable documents,  
3 and trace evidence.

4 “(3) To train, assist, and employ forensic lab-  
5 oratory personnel, as needed, to eliminate such a  
6 backlog.”;

7 (2) in subsection (b), by striking “under this  
8 part” and inserting “for the purpose set forth in  
9 subsection (a)(1)”;

10 (3) by adding at the end the following:

11 “(e) BACKLOG DEFINED.—For purposes of this sec-  
12 tion, a backlog in the analysis of forensic science evidence  
13 exists if such evidence—

14 “(1) has been stored in a laboratory, medical  
15 examiner’s office, coroner’s office, law enforcement  
16 storage facility, or medical facility; and

17 “(2) has not been subjected to all appropriate  
18 forensic testing because of a lack of resources or  
19 personnel.”.

20 (b) EXTERNAL AUDITS.—Section 2802 of the Omni-  
21 bus Crime Control and Safe Streets Act of 1968 (42  
22 U.S.C. 3797k) is amended—

23 (1) in paragraph (2), by striking “and” at the  
24 end;

1           (2) in paragraph (3), by striking the period at  
2           the end and inserting “; and”; and

3           (3) by adding at the end the following:

4           “(4) a certification that a government entity ex-  
5           ists and an appropriate process is in place to con-  
6           duct independent external investigations into allega-  
7           tions of serious negligence or misconduct substan-  
8           tially affecting the integrity of the forensic results  
9           committed by employees or contractors of any foren-  
10          sic laboratory system, medical examiner’s office,  
11          coroner’s office, law enforcement storage facility, or  
12          medical facility in the State that will receive a por-  
13          tion of the grant amount.”.

14          (c) **THREE-YEAR EXTENSION OF AUTHORIZATION OF**  
15 **APPROPRIATIONS.**—Section 1001(a)(24) of the Omnibus  
16 **Crime Control and Safe Streets Act of 1968 (42 U.S.C.**  
17 **3793(a)(24)) is amended—**

18           (1) in subparagraph (E), by striking “and” at  
19           the end;

20           (2) in subparagraph (F), by striking the period  
21           at the end and inserting a semicolon; and

22           (3) by adding at the end the following:

23           “(G) \$20,000,000 for fiscal year 2007;

24           “(H) \$20,000,000 for fiscal year 2008; and

25           “(I) \$20,000,000 for fiscal year 2009.”.

1 (d) TECHNICAL AMENDMENT.—Section 1001(a) of  
2 such Act, as amended by subsection (c), is further amend-  
3 ed by realigning paragraphs (24) and (25) so as to be  
4 flush with the left margin.

5 **SEC. 312. REPORT TO CONGRESS.**

6 (a) IN GENERAL.—Not later than 2 years after the  
7 date of enactment of this Act, the Attorney General shall  
8 submit to Congress a report on the implementation of this  
9 Act and the amendments made by this Act.

10 (b) CONTENTS.—The report submitted under sub-  
11 section (a) shall include a description of—

12 (1) the progress made by Federal, State, and  
13 local entities in—

14 (A) collecting and entering DNA samples  
15 from offenders convicted of qualifying offenses  
16 for inclusion in the Combined DNA Index Sys-  
17 tem (referred to in this subsection as  
18 “CODIS”);

19 (B) analyzing samples from crime scenes,  
20 including evidence collected from sexual as-  
21 saults and other serious violent crimes, and en-  
22 tering such DNA analyses in CODIS; and

23 (C) increasing the capacity of forensic lab-  
24 oratories to conduct DNA analyses;

1           (2) the priorities and plan for awarding grants  
2           among eligible States and units of local government  
3           to ensure that the purposes of this Act are carried  
4           out;

5           (3) the distribution of grant amounts under this  
6           Act among eligible States and local governments,  
7           and whether the distribution of such funds has  
8           served the purposes of the Debbie Smith DNA  
9           Backlog Grant Program;

10          (4) grants awarded and the use of such grants  
11          by eligible entities for DNA training and education  
12          programs for law enforcement, correctional per-  
13          sonnel, court officers, medical personnel, victim serv-  
14          ice providers, and other personnel authorized under  
15          sections 303 and 304;

16          (5) grants awarded and the use of such grants  
17          by eligible entities to conduct DNA research and de-  
18          velopment programs to improve forensic DNA tech-  
19          nology, and implement demonstration projects under  
20          section 305;

21          (6) the steps taken to establish the National  
22          Forensic Science Commission, and the activities of  
23          the Commission under section 306;

24          (7) the use of funds by the Federal Bureau of  
25          Investigation under section 307;

1           (8) grants awarded and the use of such grants  
2           by eligible entities to promote the use of forensic  
3           DNA technology to identify missing persons and un-  
4           identified human remains under section 308;

5           (9) grants awarded and the use of such grants  
6           by eligible entities to eliminate forensic science back-  
7           logs under the amendments made by section 311;

8           (10) State compliance with the requirements set  
9           forth in section 413; and

10          (11) any other matters considered relevant by  
11          the Attorney General.

12                   **TITLE IV—INNOCENCE**  
13                   **PROTECTION ACT OF 2004**

14   **SEC. 401. SHORT TITLE.**

15          This title may be cited as the “Innocence Protection  
16   Act of 2004”.

17                   **Subtitle A—Exonerating the**  
18                   **Innocent Through DNA Testing**

19   **SEC. 411. FEDERAL POST-CONVICTION DNA TESTING.**

20          (a) **FEDERAL CRIMINAL PROCEDURE.—**

21                  (1) **IN GENERAL.—**Part II of title 18, United  
22          States Code, is amended by inserting after chapter  
23          228 the following:



1           “(II) evidence of such offense was ad-  
2           mitted during a Federal death sentencing  
3           hearing and exoneration of such offense  
4           would entitle the applicant to a reduced  
5           sentence or new sentencing hearing; and

6           “(ii) in the case of a State offense—

7           “(I) the applicant demonstrates  
8           that there is no adequate remedy  
9           under State law to permit DNA test-  
10          ing of the specified evidence relating  
11          to the State offense; and

12          “(II) to the extent available, the  
13          applicant has exhausted all remedies  
14          available under State law for request-  
15          ing DNA testing of specified evidence  
16          relating to the State offense;

17          “(2) the specific evidence to be tested was se-  
18          cured in relation to the investigation or prosecution  
19          of the Federal or State offense referenced in the ap-  
20          plicant’s assertion under paragraph (1);

21          “(3) the specific evidence to be tested—

22          “(A) was not previously subjected to DNA  
23          testing and the applicant did not knowingly and  
24          voluntarily waive the right to request DNA test-  
25          ing of that evidence in a court proceeding after

1 the date of enactment of the Innocence Protec-  
2 tion Act of 2004; or

3 “(B) was previously subjected to DNA  
4 testing and the applicant is requesting DNA  
5 testing using a new method or technology that  
6 is substantially more probative than the prior  
7 DNA testing;

8 “(4) the specific evidence to be tested is in the  
9 possession of the Government and has been subject  
10 to a chain of custody and retained under conditions  
11 sufficient to ensure that such evidence has not been  
12 substituted, contaminated, tampered with, replaced,  
13 or altered in any respect material to the proposed  
14 DNA testing;

15 “(5) the proposed DNA testing is reasonable in  
16 scope, uses scientifically sound methods, and is con-  
17 sistent with accepted forensic practices;

18 “(6) the applicant identifies a theory of defense  
19 that—

20 “(A) is not inconsistent with an affirmative  
21 defense presented at trial; and

22 “(B) would establish the actual innocence  
23 of the applicant of the Federal or State offense  
24 referenced in the applicant’s assertion under  
25 paragraph (1);

1           “(7) if the applicant was convicted following a  
2 trial, the identity of the perpetrator was at issue in  
3 the trial;

4           “(8) the proposed DNA testing of the specific  
5 evidence—

6                   “(A) would produce new material evidence  
7 to support the theory of defense referenced in  
8 paragraph (6); and

9                   “(B) assuming the DNA test result ex-  
10 cludes the applicant, would raise a reasonable  
11 probability that the applicant did not commit  
12 the offense;

13           “(9) the applicant certifies that the applicant  
14 will provide a DNA sample for purposes of compari-  
15 son; and

16           “(10) the applicant’s motion is filed for the  
17 purpose of demonstrating the applicant’s actual in-  
18 nocence of the Federal or State offense, and not to  
19 delay the execution of the sentence or the adminis-  
20 tration of justice.

21           “(b) NOTICE TO THE GOVERNMENT; PRESERVATION  
22 ORDER; APPOINTMENT OF COUNSEL.—

23                   “(1) NOTICE.—Upon the receipt of a motion  
24 filed under subsection (a), the court shall—

25                           “(A) notify the Government; and

1           “(B) allow the Government a reasonable  
2           time period to respond to the motion.

3           “(2) PRESERVATION ORDER.—To the extent  
4           necessary to carry out proceedings under this sec-  
5           tion, the court shall direct the Government to pre-  
6           serve the specific evidence relating to a motion under  
7           subsection (a).

8           “(3) APPOINTMENT OF COUNSEL.—The court  
9           may appoint counsel for an indigent applicant under  
10          this section in the same manner as in a proceeding  
11          under section 3006A(a)(2)(B).

12          “(c) TESTING PROCEDURES.—

13           “(1) IN GENERAL.—The court shall direct that  
14           any DNA testing ordered under this section be car-  
15           ried out by the Federal Bureau of Investigation.

16           “(2) EXCEPTION.—Notwithstanding paragraph  
17           (1), the court may order DNA testing by another  
18           qualified laboratory if the court makes all necessary  
19           orders to ensure the integrity of the specific evidence  
20           and the reliability of the testing process and test re-  
21           sults.

22           “(3) COSTS.—The costs of any DNA testing or-  
23           dered under this section shall be paid—

24           “(A) by the applicant; or

1                   “(B) in the case of an applicant who is in-  
2                   digent, by the Government.

3           “(d) TIME LIMITATION IN CAPITAL CASES.—In any  
4 case in which the applicant is sentenced to death—

5                   “(1) any DNA testing ordered under this sec-  
6                   tion shall be completed not later than 60 days after  
7                   the date on which the Government responds to the  
8                   motion filed under subsection (a); and

9                   “(2) not later than 120 days after the date on  
10                  which the DNA testing ordered under this section is  
11                  completed, the court shall order any post-testing  
12                  procedures under subsection (f) or (g), as appro-  
13                  priate.

14           “(e) REPORTING OF TEST RESULTS.—

15                   “(1) IN GENERAL.—The results of any DNA  
16                   testing ordered under this section shall be simulta-  
17                   neously disclosed to the court, the applicant, and the  
18                   Government.

19                   “(2) NDIS.—The Government shall submit any  
20                   test results relating to the DNA of the applicant to  
21                   the National DNA Index System (referred to in this  
22                   subsection as ‘NDIS’).

23                   “(3) RETENTION OF DNA SAMPLE.—

24                   “(A) ENTRY INTO NDIS.—If the DNA test  
25                   results obtained under this section are inconclu-

1 sive or show that the applicant was the source  
2 of the DNA evidence, the DNA sample of the  
3 applicant may be retained in NDIS.

4 “(B) MATCH WITH OTHER OFFENSE.—If  
5 the DNA test results obtained under this sec-  
6 tion exclude the applicant as the source of the  
7 DNA evidence, and a comparison of the DNA  
8 sample of the applicant results in a match be-  
9 tween the DNA sample of the applicant and an-  
10 other offense, the Attorney General shall notify  
11 the appropriate agency and preserve the DNA  
12 sample of the applicant.

13 “(C) NO MATCH.—If the DNA test results  
14 obtained under this section exclude the appli-  
15 cant as the source of the DNA evidence, and a  
16 comparison of the DNA sample of the applicant  
17 does not result in a match between the DNA  
18 sample of the applicant and another offense,  
19 the Attorney General shall destroy the DNA  
20 sample of the applicant and ensure that such  
21 information is not retained in NDIS if there is  
22 no other legal authority to retain the DNA  
23 sample of the applicant in NDIS.

24 “(f) POST-TESTING PROCEDURES; INCONCLUSIVE  
25 AND INCULPATORY RESULTS.—

1           “(1) INCONCLUSIVE RESULTS.—If DNA test re-  
2           sults obtained under this section are inconclusive,  
3           the court may order further testing, if appropriate,  
4           or may deny the applicant relief.

5           “(2) INCULPATORY RESULTS.—If DNA test re-  
6           sults obtained under this section show that the ap-  
7           plicant was the source of the DNA evidence, the  
8           court shall—

9                   “(A) deny the applicant relief; and

10                   “(B) on motion of the Government—

11                           “(i) make a determination whether  
12                           the applicant’s assertion of actual inno-  
13                           cence was false, and, if the court makes  
14                           such a finding, the court may hold the ap-  
15                           plicant in contempt;

16                           “(ii) assess against the applicant the  
17                           cost of any DNA testing carried out under  
18                           this section;

19                           “(iii) forward the finding to the Direc-  
20                           tor of the Bureau of Prisons, who, upon  
21                           receipt of such a finding, may deny, wholly  
22                           or in part, the good conduct credit author-  
23                           ized under section 3632 on the basis of  
24                           that finding;

1                   “(iv) if the applicant is subject to the  
2                   jurisdiction of the United States Parole  
3                   Commission, forward the finding to the  
4                   Commission so that the Commission may  
5                   deny parole on the basis of that finding;  
6                   and

7                   “(v) if the DNA test results relate to  
8                   a State offense, forward the finding to any  
9                   appropriate State official.

10                  “(3) SENTENCE.—In any prosecution of an ap-  
11                  plicant under chapter 79 for false assertions or other  
12                  conduct in proceedings under this section, the court,  
13                  upon conviction of the applicant, shall sentence the  
14                  applicant to a term of imprisonment of not less than  
15                  3 years, which shall run consecutively to any other  
16                  term of imprisonment the applicant is serving.

17                  “(g) POST-TESTING PROCEDURES; MOTION FOR  
18                  NEW TRIAL OR RESENTENCING.—

19                  “(1) IN GENERAL.—Notwithstanding any law  
20                  that would bar a motion under this paragraph as  
21                  untimely, if DNA test results obtained under this  
22                  section exclude the applicant as the source of the  
23                  DNA evidence, the applicant may file a motion for  
24                  a new trial or resentencing, as appropriate. The  
25                  court shall establish a reasonable schedule for the

1 applicant to file such a motion and for the Govern-  
2 ment to respond to the motion.

3 “(2) STANDARD FOR GRANTING MOTION FOR  
4 NEW TRIAL OR RESENTENCING.—The court shall  
5 grant the motion of the applicant for a new trial or  
6 resentencing, as appropriate, if the DNA test re-  
7 sults, when considered with all other evidence in the  
8 case (regardless of whether such evidence was intro-  
9 duced at trial), establish by a preponderance of the  
10 evidence that a new trial would result in an acquittal  
11 of—

12 “(A) in the case of a motion for a new  
13 trial, the Federal offense for which the appli-  
14 cant is under a sentence of imprisonment or  
15 death; and

16 “(B) in the case of a motion for resen-  
17 tencing, another Federal or State offense, if—

18 “(i) such offense was legally necessary  
19 to make the applicant eligible for a sen-  
20 tence as a career offender under section  
21 3559(e) or an armed career offender under  
22 section 924(e), and exoneration of such of-  
23 fense would entitle the applicant to a re-  
24 duced sentence; or

1                   “(ii) evidence of such offense was ad-  
2                   mitted during a Federal death sentencing  
3                   hearing and exoneration of such offense  
4                   would entitle the applicant to a reduced  
5                   sentence or a new sentencing proceeding.

6                   “(h) OTHER LAWS UNAFFECTED.—

7                   “(1) POST-CONVICTION RELIEF.—Nothing in  
8                   this section shall affect the circumstances under  
9                   which a person may obtain DNA testing or post-con-  
10                  viction relief under any other law.

11                  “(2) HABEAS CORPUS.—Nothing in this section  
12                  shall provide a basis for relief in any Federal habeas  
13                  corpus proceeding.

14                  “(3) APPLICATION NOT A MOTION.—An appli-  
15                  cation under this section shall not be considered to  
16                  be a motion under section 2255 for purposes of de-  
17                  termining whether the application or any other mo-  
18                  tion is a second or successive motion under section  
19                  2255.

20                  “§ 3600A. Preservation of biological evidence

21                  “(a) IN GENERAL.—Notwithstanding any other pro-  
22                  vision of law, the Government shall preserve biological evi-  
23                  dence that was secured in the investigation or prosecution  
24                  of a Federal offense, if a defendant is under a sentence  
25                  of imprisonment for such offense.

1       “(b) DEFINED TERM.—For purposes of this section,  
2 the term ‘biological evidence’ means—

3           “(1) a sexual assault forensic examination kit;

4       or

5           “(2) semen, blood, saliva, hair, skin tissue, or  
6 other identified biological material.

7       “(c) APPLICABILITY.—Subsection (a) shall not apply  
8 if—

9           “(1) a court has denied a request or motion for  
10 DNA testing of the biological evidence by the de-  
11 fendant under section 3600, and no appeal is pend-  
12 ing;

13           “(2) the defendant knowingly and voluntarily  
14 waived the right to request DNA testing of such evi-  
15 dence in a court proceeding conducted after the date  
16 of enactment of the Innocence Protection Act of  
17 2004;

18           “(3) the defendant is notified after conviction  
19 that the biological evidence may be destroyed and  
20 the defendant does not file a motion under section  
21 3600 within 180 days of receipt of the notice; or

22           “(4)(A) the evidence must be returned to its  
23 rightful owner, or is of such a size, bulk, or physical  
24 character as to render retention impracticable; and

1           “(B) the Government takes reasonable meas-  
2           ures to remove and preserve portions of the material  
3           evidence sufficient to permit future DNA testing.

4           “(d) OTHER PRESERVATION REQUIREMENT.—Noth-  
5           ing in this section shall preempt or supersede any statute,  
6           regulation, court order, or other provision of law that may  
7           require evidence, including biological evidence, to be pre-  
8           served.

9           “(e) REGULATIONS.—Not later than 180 days after  
10          the date of enactment of the Innocence Protection Act of  
11          2004, the Attorney General shall promulgate regulations  
12          to implement and enforce this section, including appro-  
13          priate disciplinary sanctions to ensure that employees  
14          comply with such regulations.

15          “(f) CRIMINAL PENALTY.—Whoever knowingly and  
16          intentionally destroys, alters, or tampers with biological  
17          evidence that is required to be preserved under this section  
18          with the intent to prevent that evidence from being sub-  
19          jected to DNA testing or prevent the production or use  
20          of that evidence in an official proceeding, shall be fined  
21          under this title, imprisoned for not more than 5 years,  
22          or both.

23          “(g) HABEAS CORPUS.—Nothing in this section shall  
24          provide a basis for relief in any Federal habeas corpus  
25          proceeding.”.

1           (2) CLERICAL AMENDMENT.—The chapter anal-  
 2           ysis for part II of title 18, United States Code, is  
 3           amended by inserting after the item relating to  
 4           chapter 228 the following:

“228A. Post-conviction DNA testing ..... 3600”.

5           (b) SYSTEM FOR REPORTING MOTIONS.—

6           (1) ESTABLISHMENT.—The Attorney General  
 7           shall establish a system for reporting and tracking  
 8           motions filed in accordance with section 3600 of title  
 9           18, United States Code.

10          (2) OPERATION.—In operating the system es-  
 11          tablished under paragraph (1), the Federal courts  
 12          shall provide to the Attorney General any requested  
 13          assistance in operating such a system and in ensur-  
 14          ing the accuracy and completeness of information in-  
 15          cluded in that system.

16          (3) REPORT.—Not later than 2 years after the  
 17          date of enactment of this Act, the Attorney General  
 18          shall submit a report to Congress that contains—

19                (A) a list of motions filed under section  
 20                3600 of title 18, United States Code, as added  
 21                by this Act;

22                (B) whether DNA testing was ordered pur-  
 23                suant to such a motion;

24                (C) whether the applicant obtained relief  
 25                on the basis of DNA test results; and

1 (D) whether further proceedings occurred  
2 following a granting of relief and the outcome  
3 of such proceedings.

4 (4) ADDITIONAL INFORMATION.—The report re-  
5 quired to be submitted under paragraph (3) may in-  
6 clude any other information the Attorney General  
7 determines to be relevant in assessing the operation,  
8 utility, or costs of section 3600 of title 18, United  
9 States Code, as added by this Act, and any rec-  
10 ommendations the Attorney General may have relat-  
11 ing to future legislative action concerning that sec-  
12 tion.

13 (c) EFFECTIVE DATE; APPLICABILITY.—This section  
14 and the amendments made by this section shall take effect  
15 on the date of enactment of this Act and shall apply with  
16 respect to any offense committed, and to any judgment  
17 of conviction entered, before, on, or after that date of en-  
18 actment.

19 **SEC. 412. KIRK BLOODSWORTH POST-CONVICTION DNA**  
20 **TESTING GRANT PROGRAM.**

21 (a) IN GENERAL.—The Attorney General shall estab-  
22 lish the Kirk Bloodsworth Post-Conviction DNA Testing  
23 Grant Program to award grants to States to help defray  
24 the costs of post-conviction DNA testing.

1 (b) AUTHORIZATION OF APPROPRIATIONS.—There  
2 are authorized to be appropriated \$5,000,000 for each of  
3 fiscal years 2005 through 2009 to carry out this section.

4 (c) STATE DEFINED.—For purposes of this section,  
5 the term “State” means a State of the United States, the  
6 District of Columbia, the Commonwealth of Puerto Rico,  
7 the United States Virgin Islands, American Samoa,  
8 Guam, and the Northern Mariana Islands.

9 **SEC. 413. INCENTIVE GRANTS TO STATES TO ENSURE CON-**  
10 **SIDERATION OF CLAIMS OF ACTUAL INNO-**  
11 **CENCE.**

12 For each of fiscal years 2005 through 2009, all funds  
13 appropriated to carry out sections 303, 305, 307, and 412  
14 shall be reserved for grants to eligible entities that—

15 (1) meet the requirements under section 303,  
16 305, 307, or 412, as appropriate; and

17 (2) demonstrate that the State in which the eli-  
18 gible entity operates—

19 (A) provides post-conviction DNA testing  
20 of specified evidence—

21 (i) under a State statute enacted be-  
22 fore the date of enactment of this Act (or  
23 extended or renewed after such date), to  
24 any person convicted after trial and under  
25 a sentence of imprisonment or death for a

1 State offense, in a manner that ensures a  
2 meaningful process for resolving a claim of  
3 actual innocence; or

4 (ii) under a State statute enacted  
5 after the date of enactment of this Act, or  
6 under a State rule, regulation, or practice,  
7 to any person under a sentence of impris-  
8 onment or death for a State offense, in a  
9 manner comparable to section 3600(a) of  
10 title 18, United States Code (provided that  
11 the State statute, rule, regulation, or prac-  
12 tice may make post-conviction DNA test-  
13 ing available in cases in which such testing  
14 is not required by such section), and if the  
15 results of such testing exclude the appli-  
16 cant, permits the applicant to apply for  
17 post-conviction relief, notwithstanding any  
18 provision of law that would otherwise bar  
19 such application as untimely; and

20 (B) preserves biological evidence secured in  
21 relation to the investigation or prosecution of a  
22 State offense—

23 (i) under a State statute or a State or  
24 local rule, regulation, or practice, enacted  
25 or adopted before the date of enactment of

1           this Act (or extended or renewed after  
2           such date), in a manner that ensures that  
3           reasonable measures are taken by all juris-  
4           dictions within the State to preserve such  
5           evidence; or

6           (ii) under a State statute or a State  
7           or local rule, regulation, or practice, en-  
8           acted or adopted after the date of enact-  
9           ment of this Act, in a manner comparable  
10          to section 3600A of title 18, United States  
11          Code, if—

12                   (I) all jurisdictions within the  
13                   State comply with this requirement;  
14                   and

15                   (II) such jurisdictions may pre-  
16                   serve such evidence for longer than  
17                   the period of time that such evidence  
18                   would be required to be preserved  
19                   under such section 3600A.

1 **Subtitle B—Improving the Quality**  
2 **of Representation in State Cap-**  
3 **ital Cases**

4 **SEC. 421. CAPITAL REPRESENTATION IMPROVEMENT**  
5 **GRANTS.**

6 (a) **IN GENERAL.**—The Attorney General shall award  
7 grants to States for the purpose of improving the quality  
8 of legal representation provided to indigent defendants in  
9 State capital cases.

10 (b) **DEFINED TERM.**—In this section, the term “legal  
11 representation” means legal counsel and investigative, ex-  
12 pert, and other services necessary for competent represen-  
13 tation.

14 (c) **USE OF FUNDS.**—Grants awarded under sub-  
15 section (a)—

16 (1) shall be used to establish, implement, or im-  
17 prove an effective system for providing competent  
18 legal representation to—

19 (A) indigents charged with an offense sub-  
20 ject to capital punishment;

21 (B) indigents who have been sentenced to  
22 death and who seek appellate or collateral relief  
23 in State court; and

1 (C) indigents who have been sentenced to  
2 death and who seek review in the Supreme  
3 Court of the United States; and

4 (2) shall not be used to fund, directly or indi-  
5 rectly, representation in specific capital cases.

6 (d) EFFECTIVE SYSTEM.—As used in subsection  
7 (c)(1), an effective system for providing competent legal  
8 representation is a system that—

9 (1) invests the responsibility for appointing  
10 qualified attorneys to represent indigents in capital  
11 cases—

12 (A) in a public defender program that re-  
13 lies on staff attorneys, members of the private  
14 bar, or both, to provide representation in cap-  
15 ital cases;

16 (B) in an entity established by statute or  
17 by the highest State court with jurisdiction in  
18 criminal cases, which is composed of individuals  
19 with demonstrated knowledge and expertise in  
20 capital representation; or

21 (C) pursuant to a statutory procedure en-  
22 acted before the date of the enactment of this  
23 Act under which the trial judge is required to  
24 appoint qualified attorneys from a roster main-

1           tained by a State or regional selection com-  
2           mittee or similar entity; and

3           (2) requires the program described in para-  
4           graph (1)(A), the entity described in paragraph  
5           (1)(B), or an appropriate entity designated pursuant  
6           to the statutory procedure described in paragraph  
7           (1)(C), as applicable, to—

8                   (A) establish qualifications for attorneys  
9                   who may be appointed to represent indigents in  
10                  capital cases;

11                  (B) establish and maintain a roster of  
12                  qualified attorneys;

13                  (C) except in the case of a selection com-  
14                  mittee or similar entity described in paragraph  
15                  (1)(C), assign 2 attorneys from the roster to  
16                  represent an indigent in a capital case, or pro-  
17                  vide the trial judge a list of not more than 2  
18                  pairs of attorneys from the roster, from which  
19                  1 pair shall be assigned, provided that, in any  
20                  case in which the State elects not to seek the  
21                  death penalty, a court may find, subject to any  
22                  requirement of State law, that a second attor-  
23                  ney need not remain assigned to represent the  
24                  indigent to ensure competent representation;

1 (D) conduct, sponsor, or approve special-  
2 ized training programs for attorneys rep-  
3 resenting defendants in capital cases;

4 (E) monitor the performance of attorneys  
5 who are appointed and their attendance at  
6 training programs, and remove from the roster  
7 attorneys who fail to deliver effective represen-  
8 tation or who fail to comply with such require-  
9 ments as such program, entity, or selection  
10 committee or similar entity may establish re-  
11 garding participation in training programs; and

12 (F) ensure funding for the full cost of  
13 competent legal representation by the defense  
14 team and outside experts selected by counsel,  
15 who shall be compensated—

16 (i) in the case of a State that employs  
17 a statutory procedure described in para-  
18 graph (1)(C), in accordance with the re-  
19 quirements of that statutory procedure;  
20 and

21 (ii) in all other cases, as follows:

22 (I) Attorneys employed by a pub-  
23 lic defender program shall be com-  
24 pensated according to a salary scale  
25 that is commensurate with the salary

1 scale of the prosecutor's office in the  
2 jurisdiction.

3 (II) Appointed attorneys shall be  
4 compensated for actual time and serv-  
5 ice, computed on an hourly basis and  
6 at a reasonable hourly rate in light of  
7 the qualifications and experience of  
8 the attorney and the local market for  
9 legal representation in cases reflecting  
10 the complexity and responsibility of  
11 capital cases.

12 (III) Non-attorney members of  
13 the defense team, including investiga-  
14 tors, mitigation specialists, and ex-  
15 perts, shall be compensated at a rate  
16 that reflects the specialized skills  
17 needed by those who assist counsel  
18 with the litigation of death penalty  
19 cases.

20 (IV) Attorney and non-attorney  
21 members of the defense team shall be  
22 reimbursed for reasonable incidental  
23 expenses.

1 **SEC. 422. CAPITAL PROSECUTION IMPROVEMENT GRANTS.**

2 (a) IN GENERAL.—The Attorney General shall award  
3 grants to States for the purpose of enhancing the ability  
4 of prosecutors to effectively represent the public in State  
5 capital cases.

6 (b) USE OF FUNDS.—

7 (1) PERMITTED USES.—Grants awarded under  
8 subsection (a) shall be used for one or more of the  
9 following:

10 (A) To design and implement training pro-  
11 grams for State and local prosecutors to ensure  
12 effective representation in State capital cases.

13 (B) To develop and implement appropriate  
14 standards and qualifications for State and local  
15 prosecutors who litigate State capital cases.

16 (C) To assess the performance of State  
17 and local prosecutors who litigate State capital  
18 cases, provided that such assessment shall not  
19 include participation by the assessor in the trial  
20 of any specific capital case.

21 (D) To identify and implement any poten-  
22 tial legal reforms that may be appropriate to  
23 minimize the potential for error in the trial of  
24 capital cases.

25 (E) To establish a program under which  
26 State and local prosecutors conduct a system-

1           atic review of cases in which a death sentence  
2           was imposed in order to identify cases in which  
3           post-conviction DNA testing may be appro-  
4           priate.

5                   (F) To provide support and assistance to  
6           the families of murder victims.

7           (2) PROHIBITED USE.—Grants awarded under  
8           subsection (a) shall not be used to fund, directly or  
9           indirectly, the prosecution of specific capital cases.

10 **SEC. 423. APPLICATIONS.**

11           (a) IN GENERAL.—The Attorney General shall estab-  
12           lish a process through which a State may apply for a grant  
13           under this subtitle.

14           (b) APPLICATION.—

15                   (1) IN GENERAL.—A State desiring a grant  
16           under this subtitle shall submit an application to the  
17           Attorney General at such time, in such manner, and  
18           containing such information as the Attorney General  
19           may reasonably require.

20                   (2) CONTENTS.—Each application submitted  
21           under paragraph (1) shall contain—

22                           (A) a certification by an appropriate offi-  
23           cer of the State that the State authorizes cap-  
24           ital punishment under its laws and conducts, or

1 will conduct, prosecutions in which capital pun-  
2 ishment is sought;

3 (B) a description of the communities to be  
4 served by the grant, including the nature of ex-  
5 isting capital defender services and capital pros-  
6 ecution programs within such communities;

7 (C) a long-term statewide strategy and de-  
8 tailed implementation plan that—

9 (i) reflects consultation with the judi-  
10 ciary, the organized bar, and State and  
11 local prosecutor and defender organiza-  
12 tions; and

13 (ii) establishes as a priority improve-  
14 ment in the quality of trial-level represen-  
15 tation of indigents charged with capital  
16 crimes and trial-level prosecution of capital  
17 crimes;

18 (D) in the case of a State that employs a  
19 statutory procedure described in section  
20 421(d)(1)(C), a certification by an appropriate  
21 officer of the State that the State is in substan-  
22 tial compliance with the requirements of the ap-  
23 plicable State statute; and

24 (E) assurances that Federal funds received  
25 under this subtitle shall be—

- 1 (i) used to supplement and not sup-  
2 plant non-Federal funds that would other-  
3 wise be available for activities funded  
4 under this subtitle; and
- 5 (ii) allocated in accordance with sec-  
6 tion 426(b).

7 **SEC. 424. STATE REPORTS.**

8 (a) IN GENERAL.—Each State receiving funds under  
9 this subtitle shall submit an annual report to the Attorney  
10 General that—

- 11 (1) identifies the activities carried out with such  
12 funds; and
- 13 (2) explains how each activity complies with the  
14 terms and conditions of the grant.

15 (b) CAPITAL REPRESENTATION IMPROVEMENT  
16 GRANTS.—With respect to the funds provided under sec-  
17 tion 421, a report under subsection (a) shall include—

- 18 (1) an accounting of all amounts expended;
- 19 (2) an explanation of the means by which the  
20 State—
- 21 (A) invests the responsibility for identi-  
22 fying and appointing qualified attorneys to rep-  
23 resent indigents in capital cases in a program  
24 described in section 421(d)(1)(A), an entity de-  
25 scribed in section 421(d)(1)(B), or selection

1 committee or similar entity described in section  
2 421(d)(1)(C); and

3 (B) requires such program, entity, or selec-  
4 tion committee or similar entity, or other appro-  
5 priate entity designated pursuant to the statu-  
6 tory procedure described in section  
7 421(d)(1)(C), to—

8 (i) establish qualifications for attor-  
9 neys who may be appointed to represent  
10 indigents in capital cases in accordance  
11 with section 421(d)(2)(A);

12 (ii) establish and maintain a roster of  
13 qualified attorneys in accordance with sec-  
14 tion 421(d)(2)(B);

15 (iii) assign attorneys from the roster  
16 in accordance with section 421(d)(2)(C);

17 (iv) conduct, sponsor, or approve spe-  
18 cialized training programs for attorneys  
19 representing defendants in capital cases in  
20 accordance with section 421(d)(2)(D);

21 (v) monitor the performance and  
22 training program attendance of appointed  
23 attorneys, and remove from the roster at-  
24 torneys who fail to deliver effective rep-  
25 resentation or fail to comply with such re-

1            requirements as such program, entity, or se-  
2            lection committee or similar entity may es-  
3            tablish regarding participation in training  
4            programs, in accordance with section  
5            421(d)(2)(E); and

6            (vi) ensure funding for the full cost of  
7            competent legal representation by the de-  
8            fense team and outside experts selected by  
9            counsel, in accordance with section  
10           421(d)(2)(F), including a statement set-  
11           ting forth—

12                    (I) if the State employs a public  
13                    defender program under section  
14                    421(d)(1)(A), the salaries received by  
15                    the attorneys employed by such pro-  
16                    gram and the salaries received by at-  
17                    torneys in the prosecutor’s office in  
18                    the jurisdiction;

19                    (II) if the State employs ap-  
20                    pointed attorneys under section  
21                    421(d)(1)(B), the hourly fees received  
22                    by such attorneys for actual time and  
23                    service and the basis on which the  
24                    hourly rate was calculated;

1 (III) the amounts paid to non-at-  
2 torney members of the defense team,  
3 and the basis on which such amounts  
4 were determined; and

5 (IV) the amounts for which at-  
6 torney and non-attorney members of  
7 the defense team were reimbursed for  
8 reasonable incidental expenses;

9 (3) in the case of a State that employs a statu-  
10 tory procedure described in section 421(d)(1)(C), an  
11 assessment of the extent to which the State is in  
12 compliance with the requirements of the applicable  
13 State statute; and

14 (4) a statement confirming that the funds have  
15 not been used to fund representation in specific cap-  
16 ital cases or to supplant non-Federal funds.

17 (c) CAPITAL PROSECUTION IMPROVEMENT  
18 GRANTS.—With respect to the funds provided under sec-  
19 tion 422, a report under subsection (a) shall include—

20 (1) an accounting of all amounts expended;

21 (2) a description of the means by which the  
22 State has—

23 (A) designed and established training pro-  
24 grams for State and local prosecutors to ensure

1 effective representation in State capital cases in  
2 accordance with section 422(b)(1)(A);

3 (B) developed and implemented appro-  
4 priate standards and qualifications for State  
5 and local prosecutors who litigate State capital  
6 cases in accordance with section 422(b)(1)(B);

7 (C) assessed the performance of State and  
8 local prosecutors who litigate State capital cases  
9 in accordance with section 422(b)(1)(C);

10 (D) identified and implemented any poten-  
11 tial legal reforms that may be appropriate to  
12 minimize the potential for error in the trial of  
13 capital cases in accordance with section  
14 422(b)(1)(D);

15 (E) established a program under which  
16 State and local prosecutors conduct a system-  
17 atic review of cases in which a death sentence  
18 was imposed in order to identify cases in which  
19 post-conviction DNA testing may be appro-  
20 priate in accordance with section 422(b)(1)(E);  
21 and

22 (F) provided support and assistance to the  
23 families of murder victims; and

1           (3) a statement confirming that the funds have  
2 not been used to fund the prosecution of specific  
3 capital cases or to supplant non-Federal funds.

4           (d) PUBLIC DISCLOSURE OF ANNUAL STATE RE-  
5 PORTS.—The annual reports to the Attorney General sub-  
6 mitted by any State under this section shall be made avail-  
7 able to the public.

8 **SEC. 425. EVALUATIONS BY INSPECTOR GENERAL AND AD-**  
9 **MINISTRATIVE REMEDIES.**

10           (a) EVALUATION BY INSPECTOR GENERAL.—

11           (1) IN GENERAL.—As soon as practicable after  
12 the end of the first fiscal year for which a State re-  
13 ceives funds under a grant made under this title, the  
14 Inspector General of the Department of Justice (in  
15 this section referred to as the “Inspector General”)  
16 shall—

17           (A) after affording an opportunity for any  
18 person to provide comments on a report sub-  
19 mitted under section 424, submit to Congress  
20 and to the Attorney General a report evaluating  
21 the compliance by the State with the terms and  
22 conditions of the grant; and

23           (B) if the Inspector General concludes that  
24 the State is not in compliance with the terms  
25 and conditions of the grant, specify any defi-

1           ciencies and make recommendations for correc-  
2           tive action.

3           (2) PRIORITY.—In conducting evaluations  
4           under this subsection, the Inspector General shall  
5           give priority to States that the Inspector General de-  
6           termines, based on information submitted by the  
7           State and other comments provided by any other  
8           person, to be at the highest risk of noncompliance.

9           (3) DETERMINATION FOR STATUTORY PROCE-  
10          DURE STATES.—For each State that employs a stat-  
11          utory procedure described in section 421(d)(1)(C),  
12          the Inspector General shall submit to Congress and  
13          to the Attorney General, not later than the end of  
14          the first fiscal year for which such State receives  
15          funds, after affording an opportunity for any person  
16          to provide comments on a certification submitted  
17          under section 423(b)(2)(D), a determination as to  
18          whether the State is in substantial compliance with  
19          the requirements of the applicable State statute.

20          (b) ADMINISTRATIVE REVIEW.—

21               (1) COMMENT.—Upon receiving the report  
22               under subsection (a)(1) or the determination under  
23               subsection (a)(3), the Attorney General shall provide  
24               the State with an opportunity to comment regarding

1 the findings and conclusions of the report or the de-  
2 termination.

3 (2) CORRECTIVE ACTION PLAN.—If the Attor-  
4 ney General, after reviewing the report under sub-  
5 section (a)(1) or the determination under subsection  
6 (a)(3), determines that a State is not in compliance  
7 with the terms and conditions of the grant, the At-  
8 torney General shall consult with the appropriate  
9 State authorities to enter into a plan for corrective  
10 action. If the State does not agree to a plan for cor-  
11 rective action that has been approved by the Attor-  
12 ney General within 90 days after the submission of  
13 the report under subsection (a)(1) or the determina-  
14 tion under subsection (a)(3), the Attorney General  
15 shall, within 30 days, direct the State to take correc-  
16 tive action to bring the State into compliance.

17 (3) REPORT TO CONGRESS.—Not later than 90  
18 days after the earlier of the implementation of a cor-  
19 rective action plan or a directive to implement such  
20 a plan under paragraph (2), the Attorney General  
21 shall submit a report to Congress as to whether the  
22 State has taken corrective action and is in compli-  
23 ance with the terms and conditions of the grant.

24 (c) PENALTIES FOR NONCOMPLIANCE.—If the State  
25 fails to take the prescribed corrective action under sub-

1 section (b) and is not in compliance with the terms and  
2 conditions of the grant, the Attorney General shall dis-  
3 continue all further funding under sections 421 and 422  
4 and require the State to return the funds granted under  
5 such sections for that fiscal year. Nothing in this para-  
6 graph shall prevent a State which has been subject to pen-  
7 alties for noncompliance from reapplying for a grant under  
8 this subtitle in another fiscal year.

9 (d) PERIODIC REPORTS.—During the grant period,  
10 the Inspector General shall periodically review the compli-  
11 ance of each State with the terms and conditions of the  
12 grant.

13 (e) ADMINISTRATIVE COSTS.—Not less than 2.5 per-  
14 cent of the funds appropriated to carry out this subtitle  
15 for each of fiscal years 2005 through 2009 shall be made  
16 available to the Inspector General for purposes of carrying  
17 out this section. Such sums shall remain available until  
18 expended.

19 (f) SPECIAL RULE FOR “STATUTORY PROCEDURE”  
20 STATES NOT IN SUBSTANTIAL COMPLIANCE WITH STAT-  
21 UTORY PROCEDURES.—

22 (1) IN GENERAL.—In the case of a State that  
23 employs a statutory procedure described in section  
24 421(d)(1)(C), if the Inspector General submits a de-  
25 termination under subsection (a)(3) that the State is

1 not in substantial compliance with the requirements  
2 of the applicable State statute, then for the period  
3 beginning with the date on which that determination  
4 was submitted and ending on the date on which the  
5 Inspector General determines that the State is in  
6 substantial compliance with the requirements of that  
7 statute, the funds awarded under this subtitle shall  
8 be allocated solely for the uses described in section  
9 421.

10 (2) **RULE OF CONSTRUCTION.**—The require-  
11 ments of this subsection apply in addition to, and  
12 not instead of, the other requirements of this sec-  
13 tion.

14 **SEC. 426. AUTHORIZATION OF APPROPRIATIONS.**

15 (a) **AUTHORIZATION FOR GRANTS.**—There are au-  
16 thorized to be appropriated \$100,000,000 for each of fis-  
17 cal years 2005 through 2009 to carry out this subtitle.

18 (b) **RESTRICTION ON USE OF FUNDS TO ENSURE**  
19 **EQUAL ALLOCATION.**—Each State receiving a grant  
20 under this subtitle shall allocate the funds equally between  
21 the uses described in section 421 and the uses described  
22 in section 422, except as provided in section 425(f).

1     **Subtitle C—Compensation for the**  
2                     **Wrongfully Convicted**

3     **SEC. 431. INCREASED COMPENSATION IN FEDERAL CASES**  
4                     **FOR THE WRONGFULLY CONVICTED.**

5             Section 2513(e) of title 28, United States Code, is  
6     amended by striking “exceed the sum of \$5,000” and in-  
7     serting “exceed \$100,000 for each 12-month period of in-  
8     carceration for any plaintiff who was unjustly sentenced  
9     to death and \$50,000 for each 12-month period of incar-  
10    ceration for any other plaintiff”.

11    **SEC. 432. SENSE OF CONGRESS REGARDING COMPENSA-**  
12                     **TION IN STATE DEATH PENALTY CASES.**

13             It is the sense of Congress that States should provide  
14    reasonable compensation to any person found to have been  
15    unjustly convicted of an offense against the State and sen-  
16    tenced to death.

○